

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10299 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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DILIPKUMAR AMBALAL ALIAS VASANTLAL TRIVEDI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR CHETAN B RAVAL for Petitioner  
MR ND GOHIL ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1  
RULE SERVED for Respondent No. 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/02/99

ORAL JUDGEMENT

Grievance of the petitioner in this writ petition under Article 226 of the Constitution of India is that the detention order dated 4.7.1998 passed by the Commissioner of Police, Ahmedabad City, is illegal and the petitioner's activities were wrongly considered to be prejudicial for maintenance of public order. He has,

therefore, challenged the impugned order with further prayer that the said order be quashed and that he be released from illegal detention.

On four occasions countrymade liquor was recovered from the petitioner and cases were registered against him under the Bombay Prohibition Act. His activities were rightly considered by the Detaining Authority to be bootlegging activities of the petitioner within the meaning of section 2(b) of PASA. In addition to this, the two confidential witnesses also gave statements which give indication that the petitioner was engaged in bootlegging activity within the meaning of section 2(b) of PASA. He was, therefore, rightly considered to be a bootlegger

A bootlegger simply because of his involvement in bootlegging activity cannot be preventively detained. He could be detained only when his activities are found to be prejudicial for maintenance of public order. The four registered cases did not furnish any material that on those dates the petitioner created a situation prejudicial for maintenance of public order.

The statements of two confidential witnesses also do not give sufficient information that the activities of the petitioner on 10.6.1998 and 21.6.1998 were such which had the tendency of disturbing the even tempo of the life of the locality or society or had the tendency of disturbing public peace and tranquillity. Any, atmosphere of fear created due to minor incident cannot be equated with situation prejudicial for maintenance of public order. The learned Assistant Government Pleader, on the other hand has drawn my attention to para 4 of the counter affidavit of the Detaining Authority, wherein the Detaining Authority has mentioned that in the past on account of activities in dealing with countrymade liquor hooch tragedy occurred on various occasions due to which lives of innocent citizens were affected and in view of this it can be said that the activities of the petitioner were prejudicial for maintenance of public order. This inference of the Detaining Authority can be said to be imaginary because it was not disclosed in the grounds of detention. Moreover, this belated apprehension in the mind of the Detaining Authority as disclosed in the counter affidavit is without any material and is based on presumptions and surmises. The petitioner was arrested on four occasions and huge quantity of countrymade liquor was recovered from him. No attempt was made on either of those occasions to take sample of countrymade liquor and

get it examined for determination whether such countrymade liquor was adulterated or spurious or was mixed with liquid which could be injurious to public health and lives of the consumers. If this was not done, then abruptly, in the counter affidavit, the Detaining Authority cannot be expected to come out with justification that on account of hooch tragedy which occurred in past, the activities of the petitioner may result in repetition of such tragedy.

Consequently, it cannot be said that the activities of the petitioner were prejudicial for maintenance of public order. The detention order against the petitioner is therefore rendered illegal. It cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The impugned order of detention dated 4.7.1998 is quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt